

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE**

Before Shri George George K, JM & Shri B.R.Baskaran, AM

ITA No.1710/Bang/2016 : Asst.Year 2012-2013

ITA No.1707/Bang/2017 : Asst.Year 2013-2014

The Asst.Commissioner of Income-tax, Circle 1(2)(1) Bengaluru.	v.	Sri.Manoj Arjun Menda 45/1, Menda House, Fair Field Layout Race Course Road Bengaluru – 560 001. PAN : ACJPM3636P.
(Appellant)		(Respondent)

Appellant by : Sri.Rajesh Kumar Jha, CIT-DR

Respondent by : Sri.V.Srinivasan, Advocate

Date of Hearing : 31.12.2020	Date of Pronouncement : 04.01.2021
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ORDER

Per George George K, JM

These appeals at the instance of the Revenue are directed against two orders of CIT(A), dated 07.06.2016 and 26.05.2017. The relevant assessment years are 2012-2013 and 2013-2014.

2. Common issue is raised in these appeals, hence, they were heard together and are being disposed of by this consolidated order. We shall first adjudicate the appeal for assessment year 2012-2013 in ITA No.1710/Bang/2016.

ITA No.1710/Bang/2016 (Asst.Year 2012-2013)

3. The solitary issue that is raised is whether the CIT(A) is justified in deleting the addition of Rs.3,33,23,661 being long

term capital gains arrived at after recomputing Fair Market Value (FMV) of sale consideration being sale of shares.

4. The brief facts of the case are as follow:

The assessee is an individual, deriving income from salary, house property and other sources. For the assessment year 2012-2013, the return of income was filed on 30.07.2012 declaring total income of Rs.7,22,25,230. During the relevant assessment year, the assessee along other shareholders had sold their entire share holding (shares and debentures) in M/s.Millennia Realtors Private Limited ("MRPL" for short) to one M/s.Ambuja Housing & Urban Infrastructure Company Limited ("Ambuja Housing" for short). As per the share purchase agreement dated 20.10.2011, Ambuja Housing had agreed to pay a total sum of Rs.66,81,83,320 for the entire shareholding of the assessee and other shareholders. They also agreed to pay a sum of Rs.17,76,61,477 on account of accrued interest on debentures. Thus, the total amount payable by Ambuja Housing to the assessee and other shareholders came to Rs.84,58,44,797. The assessee held 13.29% of shareholding of the aforesaid MRPL that was transferred and accordingly received an amount of Rs.11,24,23,600 towards his portion of the shares sold. The assessee on account of the transfer of the shares, computed long term capital loss and the same was carried forward in the return of income filed on 30.07.2012.

5. For assessment year 2012-2013, in the course of assessment proceedings, the Assessing Officer called for details

relating to the transfer of shares. The assessee provided to the Assessing Officer copy of share purchase agreement, the valuation report mentioned in the share purchase agreement dated 20.10.2011, etc. The Assessing Officer sought information u/s 133(6) to Oriental Bank of Commerce, the bankers of MRPL and the property consultant, who facilitate the transfer of shares of MRPL. After receiving the information from Oriental Bank of Commerce and the property consultant, the A.O. was of the view that the FMV of the shares disclosed in share purchase agreement was on the lower side. The A.O. was of the view that to arrive at correct FMV of the share sold, the same need to be valued and held that the most appropriate method of valuation of shares is the Net Asset Valuation method (NAV). The Assessing Officer after adopting valuation under NAV method held that the sale consideration of the shares transferred by the assessee and other shareholders has to be regarded as sum of Rs.166,72,09,092 as against the sum of Rs.66,81,83,320 as per the terms of sale / purchase agreement dated 20.10.2011. The assessee's share being 13.29% of the total shareholding, the capital gains in hands of assessee was recomputed by taking the sale consideration as Rs.24,52,06,912 as against the sum of Rs.11,24,23,600 admitted by the assessee. Accordingly, the A.O. arrived at the long term capital gains of Rs.3,33,23,661 as against loss of Rs.9,94,59,651 calculated by the assessee.

6. Aggrieved by the order of the Assessing Officer in substituting the sale consideration for the purpose of calculating the long term capital gains, the assessee preferred

an appeal to the first appellate authority. The CIT(A) following the judgment of the Hon'ble Apex Court in the case of George Henderson & Co. Limited [66 ITR 622 (SC)] and other judicial pronouncements held that there is no provision under the Income-tax Act empowering the A.O. to refer the matter for valuation in relation to transfer of a capital asset, being transfer of shares. Accordingly, the CIT(A) allowed the appeal of the assessee.

7. Aggrieved by the order of the CIT(A) in deleting the addition made by the Assessing Officer towards long term capital gains on sale of shares, the Revenue has filed this appeal before the Tribunal. The learned Departmental Representative strongly supported the orders passed by the Assessing Officer and relied on the grounds raised.

8. The learned AR, on the other hand, submitted that the issue in question is squarely covered by the order of the Tribunal in the case of the other shareholders, viz., Sri.Raj Arjun Menda. The order of the Tribunal in the case of Sri.Raj Arjun Menda in ITA No.1720/Bang/2016 (order dated 20.02.2020) is placed on record.

9. We have heard the rival submissions and perused the material on record. The Tribunal in the case of Sri.Raj Arjun Menda (supra) had decided an identical issue in favour of the assessee. It was held by the Tribunal that the transfer of assets, being shares of a company, there is no provision under the Act for referring the matter for valuation. Accordingly, the Tribunal

confirmed the view of the CIT(A) and held the consideration disclosed in the share purchase agreement dated 20.10.2011 should be adopted for the purpose of computation of long term capital gains on sale of shares. The relevant finding of the Tribunal reads as follow:-

“3. We have considered the rival submissions. We find that the addition was made by the AO on the basis of future projection of income submitted by the company to its bankers for availing loan. As per section 48 of the Income Tax Act, 1961, what is relevant is full value of the consideration received or accrued as a result of transfer of capital asset. As per section 50C of the IT Act, 1961, it has been provided that in case of transfer of land / building or both, values adopted or assessed by the stamp valuation authority of the State Government for the purpose of stamp duty may be considered as full value of consideration but in the case of transfer of shares, there is no such provision which authorizes the AO to adopt any other value be it market value. For ready reference, we reproduce para 12 from the order of CIT(A) as under:-

*“12. Respectfully following the decision of the Hon'ble Karnataka High Court and pronouncement made by the Hon'ble Supreme Court in the case of **GEORGE HENDERSON Et CO. LTD.**, the contentions of the appellant are acceptable. No clear evidence of different consideration has been cited by the AO. There is no material to show that the appellant and other transferors have received any consideration in excess of the amounts specified in the sale purchase agreement. In any case, the said profits forecasted by MIPL compare reasonably with the consideration of Rs.66.81 crores received by the appellant and others. The computation made by the AO was not as per section 48 of the Act. Only as per section 50C the full value of consideration received or accruing as a result of transfer of certain capital assets being, land or building or both, shall be the value adopted or assessed by the stamp valuation authority of the State Government for purposes of payment of stamp duty. These provisions however, apply only in relation to a transfer of capital asset being land or building or both and they have no application in so far as transfer of shares. Accordingly, the addition made is hereby deleted.”*

4. *In the facts of the present case and in view of this finding of learned CIT(A) that the computation made by the AO is not as per section 48 of the IT Act, 1961 and since, it could not be controverted by the learned DR of the Revenue, we find no reason to interfere in the order of CIT(A)."*

9.1 In view of the order of the co-ordinate Bench of the Tribunal in the case of Sri.Raj Arjun Menda (supra), we hold that the CIT(A) is justified in holding that the sale consideration disclosed in the sale purchase agreement ought to be adopted for calculating the long term capital gains in the case of transfer of shares. It would be relevant to mention that Sec.50CA of the I.T.Act inserted w.e.f. 01.04.2018, would not have application to the instant case, since we are dealing with assessment year 2012-2013. In other words, Sec.50CA of the I.T.Act inserted w.e.f. 01.04.2018 clearly indicates prior to 01.04.2018, there was no provision under the I.T.Act authorizing the A.O. to refer for valuation of shares for the purpose of calculating capital gains.

10. In the result, the appeal filed by the Department is dismissed.

ITA No.1707/Bang/2017 (Asst.Year 2013-2014)

11. The issue raised in this appeal is consequential to our decision rendered for the assessment year 2012-2013 concerning ITA No.1710/Bang/2016.

12. The brief facts of the case are as follow:

For the assessment year 2013-2014, the A.O. noticed that the assessee had claimed set off of brought forward capital loss

relating to assessment year 2012-2013 amounting to Rs.9,94,59,651 against the capital gain reported for the year in appeal. It was noticed by the A.O. for the assessment year 2012-2013 vide order dated 31.03.2015 passed u/s 143(3) of the I.T.Act, the claim of capital loss by the assessee of Rs.9,94,59,651 was converted into income of Rs.3,33,23,661 for that assessment year. In view of the above, the A.O. rejected the claim of set off of brought forward loss to the extent of Rs.9,94,59,651 relating to assessment year 2012-2013. Since we have decided the issue for assessment year 2012-2013 in favour of the assessee, we hold that the assessee is entitled to set of Rs.9,94,59,651 being the capital loss. It is ordered accordingly.

13. In the result, the appeal filed by the Department is dismissed.

Order pronounced on this 04th day of January, 2021.

Sd/-
(B.R.Baskaran)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 04th January, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-1, Bangalore
4. The Pr.CIT-1, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore